IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

Civil Revision No.794 of 2006
Date of Decision: 29.5.2007

Sham Lal ..Petitioner

Versus

Sudesh Kumar and another ..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr. Chetan Mittal, Advocate
for the petitioner.

Mr. Vikas Chaudhary, Advocate
for the respondents.

H.S.BHALLA, J.

The present petitioner has challenged the order dated 13.12.2005 whereby on the application moved by the defendant-respondents under Order 7 Rule 11, Civil Procedure Code, the petitioner has been asked to deposit the court fee.

The plaintiff-petitioner filed a suit for declaration to the effect that he is an exclusive owner in possession of the various lands and consequently for declaration with the release deed dated 11.9.2003 alleged to have been executed by the him in favour of the defendant-respondents is illegal, null, void and ab initio.

As per the case of the petitioner, the averments made in the plaint clearly spells out that the main relief sought therein is that he is owner in possession of the suit land and the respondents have no right over the same. He has further challenged as a consequential relief of claim of the respondents on the basis of the release deed and mutation along with the relief and permanent injunction.

The respondents filed written statement and thereafter moved an application under Order 7 Rule 11, Civil Procedure Code, for rejection of the plaint on the basis of claim that the petitioner is required to pay court fees on its market value at the rate of Rs. 3,00,000/- per acre being Collector rate.

The learned trial court, after hearing both the parties, passed the impugned order dated 13.12.2005 directing the plaintiff-petitioner to fix the court fee at the market value within a period of two months, the operative part of which runs as under:-

> **"... In the present case, the plaintiff was a party to the release-deed but has pleaded that the same has been got executed by him in misrepresentation. In the opinion of this Court, the substantive relief of the plaintiff is the cancellation of release deed dated 11.9.2003 and the declaration is just auxiliary. Thus, the plaintiff is liable to pay ad-valorem court fees as per article 1, Schedule I of the Act on the market value of the suit property. The plaintiff cannot avoid his liability to pay ad-valorem court fee by making a suit for declaration. In these circumstances, the present application is allowed and the plaintiff is directed to affix ad-valorem court fees on the market value of the suit property, i.e., Rs.10,74,375/- within two months from today. Failing to affix court fees, would liable the plaint of the plaintiff be rejected under order 7 rule 11, C.P.C. Now the case is adjourned to 13.2.2006 for affixing the court fee on the market value of the suit property."**

Before proceeding further, reference made be made to the

relevant statutory provision of Section 7(iv)(c) of the Court Fees Act, 1870, which reads as under:-

> **"7. Computation of fees payable in certain suits:- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-**
>
> **(i) to (iii) xx xx xx**
>
> **(iv) in suits-**
>
> **(a) and (b) xx xx xx**
>
> **© for declaratory decree and consequential relief to obtain a declaratory decree of order, where consequential relief is prayed,**
>
> **(d) xx xx xx xx**
>
> **In all such suits the plaintiff shall state the amount at which he values the relief sought;**
>
> **[(a) Provided that the minimum court fee in each case shall be thirteen rupees;**
>
> **(b) Provided further that in suits coming under sub-clause ©, in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section.]**
>
> **(** See E.P.Act 26 of 1949,**
>
> **S.3(1-4-1950) and Punjab Acts 31 of 1953, S.2(13-5-1953) and 19 of 1957; Act 31 of 1966, S.88 (1-11-1966)**
>
> **(v) for possession of land, houses and gardens- In suits for the possession of land, houses and gardens – according to the value of the subject-matter; and such value shall be deemed to be -**

where the subject matter is land, and -

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue:

and such revenue is permanently settled -

ten times the revenue so payable;

(b) to (d) xx xx xx

(e) for houses and gardens – Where the subject-matter is a house or a garden – according to the market-value of the house or garden; "

Article 1 of Schedule 1 reads as under : -

Number		Proper fee
1. Plaint, written statement pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in Section 3.	when the amount or value of subject-matter dispute does not exceed five rupees	fifty Naye paise
	when such amount of value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees.	fifty Naye paise.
	xx xx xx xx xx	
	xx xx xx xx xx	
	When such amount or value	Forty-eight

exceeds fifty thousand rupees for every five thousand rupees, or par thereof, in excess of fifty thousand rupees.		**rupees eighty Naye**

In Jai Krishna Das and others Vs. Babu Ram and others, AIR 1967 Punjab 263, a Full Bench of this Court has held that for determining whether proper court-fees has been paid or not, it is not open to the Court to import into the plaint or to read into it any relief which has not been asked for by the plaintiff only in order to levy higher court-fees. It depends on the construction of the relief claimed by the plaintiff to see whether the plaintiff has, in fact, claimed a declaration simpliciter or also some consequential relief in addition to it. Each case must, for this purpose, depend on its own facts, but the body of the plaint has to be seen in order only to construe the prayer and not in order to spell out of the prayer something which is not contained in it even by implication or to enlarge its scope so as to make the suit maintainable.

In view of the aforesaid Full Bench judgment of this Court and keeping in view the claim of the plaintiff wherein the plaintiff has claimed declaratory decree simpliciter, I am of the opinion that the plaintiff is not required to pay ad valorem court fees if terms of Article I Schedule 1 of the Court fees Act. It has been so held in Bhag Singh's case (supra) that where the plaintiff claims to be in possession of the land in dispute and seeks declaration of ownership by avoiding sale deed, then section 7(iv)(c) of the Court fees Act would be applicable. In view of the said judgment, I am of the opinion that the learned trial court has erred in law in directing the plaintiff to

affix ad valorem court fees.

In view of the above, the impugned order passed by the learned trial Court suffers from patent illegality and is not sustainable in law. The revision petition is allowed and the impugned order is set aside. The learned trial court shall decide the suit in accordance with law.

May 29, 2007 **(H.S.BHALLA)**
vk **JUDGE**